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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD ALLEN BINGAMAN,

Defendant and Appellant.

2d Crim. No. B208481
(Super. Ct. No. 2007008365)
(Ventura County)

A jury convicted Ronald Allen Bingaman of one count of corporal injury to a cohabitant (Pen. Code, § 273.5, subd. (a))¹ and one count of making a criminal threat (§ 422). After the jury trial, Bingaman admitted he had a prior strike within the meaning of the Three Strikes Law (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), and had served a prior prison term (§ 667.5, subd (b)). He received a sentence of eight years, four months.

Bingaman contends the criminal threat count is not supported by substantial evidence and that the trial court erred in admitting expert testimony on battered woman's syndrome. We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

FACTS

On October 19, 2006, Diane Carrasco went to the Oxnard Police Department accompanied by a friend, Felicia. Carrasco spoke with Officer Scott Aaron. She was very upset and crying. She started to show Aaron injuries to her chest, arms and face. Aaron got her to calm down and conducted an interview. Aaron testified about the interview.

On October 16, 2006, Carrasco was lying in bed with Bingaman. They started to argue about Bingaman's friend who was sleeping in a car in the driveway. Carrasco got up and sat in a chair in the living room. Bingaman came into the living room, closed all the blinds, and straddled both of her legs as she sat in the chair. He began to choke her, cutting off her air supply. He knew that suffocating was one of her biggest fears.

While Bingaman was choking Carrasco, he demanded that she return a ring he had given her. He removed it forcibly from her finger. Then he grabbed her dog and threw it into the middle of the room. When Carrasco said she was going to call the police, Bingaman replied: "I will kill you right now." The threat made her "very scared."

On October 18, 2006, Carrasco made dinner for Bingaman while he slept. She could not wake him up for dinner. When he eventually awoke on his own, he said: "[W]here's my fucking plate, bitch." He started choking her. Then he hit her on her upper chest and head and kicked her on her shins. Aaron noticed visible injuries on her chest and arms.

On the morning of October 19, 2006, Bingaman telephoned Carrasco and demanded she return his portable air conditioner. An argument ensued. Bingaman told her: "'Me and some boys went over to the house to kill you. I want my air conditioner back.'" He also told her he would kill her before he went to jail. She told Aaron she went to the police station because she was scared.

The prosecution called Carrasco as a witness. She recanted the statements she made to Aaron. She said she lied to Aaron because she was

unhappy about how Bingaman was acting in their relationship. She denied Bingaman choked or hit her. She said she got her bruises from sports, moving furniture and from her dog jumping on her. She said Bingaman was her current boyfriend and that she loved him with all her heart.

Gail Pincus testified as an expert on battered women's syndrome. She said domestic violence victims often recant or change their statements. A study by the Los Angeles City Attorney's office found that in misdemeanor domestic violence cases, the alleged victim claims no violence occurred 70 to 80 percent of the time.

Battered women's syndrome describes a woman who is exposed to a pattern of behavior in a relationship that includes threats, intimidation, fear, coercion and actual physical violence. The abuser uses a series of tactics, including emotional abuse, isolation and economic control. This creates a dependency so the victim cannot or will not leave the relationship. Domestic violence incidents can go from a push, slap or hair-pulling to kicks, strangulation, use of weapons, rape and even murder. The abuse continues while adrenaline is running through the abuser.

When the victim calls the police or walks out, the abuser realizes there might be consequences to his actions. He fears the consequences, including going to jail, losing the woman, or having others learn what is going on behind closed doors. He tries to manipulate the victim back into the relationship. The abuser may cry, plead and make promises of reform. The victim may go back to the abuser, cover up for him and tell the police that she lied, she was just mad at him or jealous. A victim suffering from battered women's syndrome will lie under oath and recant prior statements in court.

Defense

Carrasco's sister, Susan, testified: Carrasco called her on October 19, 2006. She was very upset and wanted a ride to the police station. Carrasco told her that she found out Bingaman was out with someone else, and "" .

. . if [she] can't have him no one can.'" Carrasco told her that she was going to make a report to the police. She said, "I'm going to F him up and the bottom line is I want him off the streets and this is the only way that I can do it because he's not coming back home." Susan tried to talk Carrasco out of making a report to the police, but she would not listen. Susan reluctantly dropped Carrasco off at the police station. Later, Carrasco told her she lied to the police about her bruises and the physical things Bingaman did to her and that "she laid it on thick."

DISCUSSION

I

Bingaman contends his conviction for making criminal threats was not supported by substantial evidence.

In reviewing the sufficiency of the evidence we view the evidence in a light most favorable to the judgment. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) We discard evidence that does not support the judgment as having been rejected by the trier of fact for lack of sufficient verity. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.) We have no power on appeal to reweigh the evidence or judge the credibility of witnesses. (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) We must affirm if we determine that any rational trier of fact could find the elements of the crime or enhancement beyond a reasonable doubt. (*People v. Johnson, supra*, at p. 578.)

Here Officer Aaron testified that Carrasco told him Bingaman threatened to kill her. Bingaman concedes that the testimony of a single witness is sufficient to support the conviction. (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) Bingaman points out, however, that Carrasco testified she lied to Aaron, and her sister corroborated her testimony. Bingaman believes that, under the circumstances, no reasonable trier of fact could find the elements of the crime beyond a reasonable doubt.

But Pincus, the expert on battered women's syndrome, testified that the victims of domestic violence often recant. Indeed, Carrasco testified that

Bingaman is her current boyfriend and that she loved him with all her heart. It is true that Carrasco's sister corroborated her testimony. But the jury was not required to believe her sister. The jury could reasonably conclude Carrasco's sister lied to support her sibling.

Bingaman's reliance on *People v. Cuevas* (1995) 12 Cal.4th 252, is misplaced. There, the court overruled *People v. Gould* (1960) 54 Cal.2d 621. *Gould* had held a testifying witness out-of-court identification of the defendant that cannot be confirmed by an identification at trial is always by itself insufficient to sustain a conviction. Instead, *Cuevas* held that the sufficiency of such an identification should be judged by the substantial evidence standard. (*People v. Cuevas, supra*, at p. 277.)

In so holding, the court stated many circumstances explain a witness's failure to identify the defendant at trial, including: "(1) whether the identifying witness admits, denies, or fails to remember making the out-of-court identification; (2) whether the witness remembers the underlying events of the crime but no longer believes in the accuracy of the out-of-court identification; (3) whether, if the witness claims the identification was false or erroneous, the witness offers an explanation for making a false or erroneous identification; (4) whether, if the witness claims a failure of recollection, there are reasons supporting the loss of memory; (5) whether there is evidence that the witness's failure to confirm the identification in court resulted from the witness's appreciation that doing so would result in the defendant's conviction; or (6) whether there is evidence that, as the Attorney General suggests occurred here, the witness's failure to confirm the identification arises from fear or intimidation." (*People v. Cuevas, supra*, 12 Cal.4th at pp. 267-268.)

Bingaman attempts to turn the court's examples of circumstances that explain the witness's failure to identify the defendant at trial into a test for substantial evidence. But the court had no such intent. *Cuevas* makes it clear that the general substantial evidence standards as stated in *People v. Johnson, supra*,

26 Cal.3d at page 578, applies to uncorroborated out-of-court eyewitness identifications. (*People v. Cuevas*, *supra*, 12 Cal.4th at p. 277.)

Cuevas concerns whether out-of-court eyewitness identifications need in-court corroboration. That is not an issue here. If anything, *Cuevas* works against Bingaman. *Cuevas* makes it clear that under the appropriate circumstances, an out-of-court statement can alone serve as substantial evidence to support the conviction. Under the circumstances, here Carrasco's statements to Aaron are alone sufficient to support the judgment.

II

Bingaman contends the trial court abused its discretion by allowing expert testimony on battered women's syndrome to exceed that allowed by Evidence Code section 1107.

Evidence Code section 1107, subdivision (a), provides: "In a criminal action, expert testimony is admissible by either the prosecution or the defense regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions, or behavior of victims of domestic violence, except when offered against a criminal defendant to prove the occurrence of the act or acts of abuse which form the basis of the criminal charge."

The trial court instructed: "Ms. Pincus's testimony about battered women's syndrome is not evidence the defendant committed any of the crimes charged against him. And so it's being offered for the limited purpose then of deciding - - for you to decide whether or not Ms. Diane Carrasco's conduct was consistent or not consistent with the conduct of someone who has been abused in evaluating her - - the believability of her testimony."

Bingaman complains that Pincus's testimony described how a male abuses and gains control over his female victim. Bingaman believes that such testimony is irrelevant to the credibility of the alleged victim in light of her recantation, the only purpose for which the testimony was properly admitted. But

in order for the jury to understand the victim's recantation, the jury must understand how the abuser gains control over his victim. Only by understanding the abuser's control, can a jury understand why the victim would recant.

Bingaman complains that Pincus's testimony about typical types of abuses included examples precisely matching the conduct for which he was convicted. But Pincus's description of an abuser's conduct was generic. She testified abusers make threats, kick and strangle their victims, among other conduct. She also said abusers fear going to jail most. It was necessary to describe a typical abuser's conduct to assist the jury in deciding whether Bingaman is an abuser. The jury had to decide that Bingaman is an abuser in order for battered women's syndrome to apply as an explanation for Carrasco's recantation. That Pincus's description of an abuser's conduct matched Bingaman's conduct, simply shows Bingaman is an abuser.

Moreover, the court instructed that Pincus's testimony is not evidence Bingaman committed any of the crimes alleged against him. (CALCRIM No. 850.) We presume jurors followed the court's instructions. (*People v. Delgado* (1993) 5 Cal.4th 312, 331.)

Bingaman's reliance on *People v. Gomez* (1999) 72 Cal.App.4th 405 is misplaced. In *Gomez*, there was no evidence the defendant fit the profile of an abuser, or that the defendant and his alleged victim were engaged in an abusive relationship. The Court of Appeal concluded Pincus's battered women's syndrome testimony was irrelevant. In determining Pincus's testimony was prejudicial, the court described it as "inflammatory." (*Id.* at p. 419.)

Of course, battered women's syndrome testimony can be prejudicially inflammatory where there is no evidence to support it. But here there is ample evidence to support it. Carrasco described to Aaron multiple incidents of threats and physical abuse. Now she is back with Bingaman and has declared her love for him. Pincus's testimony was properly admitted, and there is nothing in the record to suggest the jury did not follow the court's limiting instruction.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Douglas W. Daily, Judge
Superior Court County of Ventura

Law Office of David Andreason, under appointment by the Court of
Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan
Sullivan Pithey, Supervising Deputy Attorney General, Michael J. Wise, Deputy
Attorney General, for Plaintiff and Respondent.